Book Reviews

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Disaster Law
by Kristian Cedervall Lauta
New York: Routledge, 2015, 157 pp.
£ 90.00; Hardcover

*Karen Da Costa**

Disasters have attracted growing interest in recent legal scholarship. Events such as the 2005 Hurricane Katrina in the US, and the 2011 Fukushima triple disaster in Japan, led to greater public pressure and scholarly concern in finding out whether and how to hold key actors into account.

In this volume, Lauta engages with this topic, but before addressing these questions he first draws a comprehensive account of early public perceptions, philosophical and legal theoretical considerations of disasters, from god's wrath to the untamable force of nature. He anchors his approach to the subject on the work of critical legal positivist Tuori, analyzing law beyond the mere collection of rules and regulations, but rather investigating deeper layers of law in society, which produce each society's own legal culture.[1] This task by itself is already commendable, for it represents an effort to bringing fresh light into the subject, while opening up a dialogue across disciplines. The book shall therefore appeal to both lawyers interested in disasters, but also disaster scholars and practitioners willing to learn more about how law matters for disaster-related issues.

A key point made by the book is that early assertions linking disasters to divine forces or exclusively to nature can be securely put aside, for disasters have much more to do with the *social*, namely how a given society does (or does not) prepare itself to live with disasters. Referring to this as the 'social turn' in the understanding of disasters (from hazards alone to *vulnerability* exposed by natural hazards) the book considers how this change in the conceptualization of disasters affects law.[2] In other words, disasters are not exclusively due to natural hazards (such as earthquakes); but they are rather linked to the social vulnerability of a given society, which is merely exposed through natural hazards. This social vulnerability was already existent, and natural hazards only 'pull the blanket', and hence reveal difficulties dating long before a hazard strikes. Examples of social vulnerability range from the lack of adoption and/or defective implementation of building standards, a failing disaster response system, miscommunications in disasters, and many more.

The 'social turn' insight gives rise to the claim that the exception framework often favored in disasters should be instead replaced by a normalcy framework. As suggested in the book, by acknowledging that disasters have a less extraordinary quality and shall be rather understood as social phenomena, the clear distinction between normalcy and emergency loses its point, crumbling altogether.[3] This paradigm change undergone in the understanding of disasters - from *external* god or nature, to *internal* (vulnerability) - challenges the old disaster emergency paradigm.[4] This is of crucial legal importance, for as disasters are increasingly considered regular part of life, more obligations are to be identified and assigned to different actors, from public officials to private actors, in terms of what needs to be done for reducing societies' vulnerability to disasters. As suggested in the book, disasters can be mitigated through social organization, and disaster law may play a crucial role here, regulating the whole traditional disaster management circle. In other words, as disasters are now un-

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1 See Kristian Lauta, *Disaster Law,* (New York: Routledge), at pp. 5-6.

2 Lauta, *Disaster Law, supra* note 1, at p. 2.

3 Lauta, *Disaster Law, supra* note 1, at pp. 2, 34 and 60.

4 Lauta, *Disaster Law, supra* note 1, at p. 62.

derstood as social phenomena, they have entered the realm of the law.[5]

The approach taken to analyze the dissolution of the strict dichotomy between emergency and normal times in disasters is developed across two angles.[6] They are: (1) *institutional terms*, with the suggestion that no separate disaster institutional architecture is needed, but that disaster management shall rather integrate all bodies of society; and (2) *legal terms,* suggesting a continuum of the legal regulation of disasters, including in what regards disaster response, touching upon issues of legal responsibility in the aftermath of disasters, including compensation, criminal liability, etc.

The book is structured in six chapters. Chapter 1 is the introductory chapter, outlining the aims and limits of the study; Chapter 2 covers disasters in the various paradigms adopted along history, from god to nature to the current understanding of disasters as social vulnerability. The chapter further grapples with particular aspects of current disaster research, among others, how it perceives key notions of risk and vulnerability. Chapter 3 shifts towards the legal coverage of disasters, addressing legal and political theories covering emergencies, and how the state and its authorities shall address them. It critically analyses those theories, making it clear that they no longer match the current understanding of disasters, regarding which *exceptionalism* has been discarded. Chapter 4 focuses on current developments towards disaster management, paying special attention to recent decisions of the European Court of Human Rights acknowledging state obligations in relation to disaster management, and also covering cooperative developments towards disaster management within regional initiatives (Nordic cooperation but also disaster management under the EU). It also discusses prospects of further developing the field of international disaster response law. Chapter 5 is dedicated to disaster responsibility, and starts with an interesting reference to and use of Shklar's theory on misfortune and injustice.[7] Disasters as currently understood reflect the latter, for they are a result of a social lack of preparation. The chapter dwells into the range of *excuses* traditionally available in legal systems to avoid finding human responsibility in disasters (especially 'acts of God'), and considers how they clash with the new understanding of disasters. The chapter further addresses two timely case studies and their legal consequences, namely the Fukushima disaster in Japan, where the responsibility of private actors has been widely debated; and also the L'Aquila earthquake in Italy, following which disaster specialists were criminally prosecuted due to their flawed message reassuring the population against any imminent danger. The final chapter provides an overview of the theoretical field of disaster law, tracing prospects for its development and how this may strengthen human resilience to disaster. It also demonstrates awareness of the limits of disaster regulation.

Despite its relative short size, the book is a genuine *tour de force*, combining many areas, from history to legal theory to a topical overview of national court cases on recent disasters. In this sense, author's efforts are to be praised in terms of combining different strands of thinking, historical and theoretical debates, while competently transposing them into the legal context. Having said that, there is a price to pay for this large span of covered areas, and in some passages it would have been welcome to delve further into covered issues. One example is the coverage of human rights, especially the conclusion at p. 102, where it is boldly suggested that under the European Convention on Human Rights states are obliged to develop and enforce disaster law. A more nuanced approached would be preferable, in which the above statement is qualified, namely making it clear that the conclusion of the court (regarding the right to life under the convention) arose from a small string of cases touching upon disasters. It is to be acknowledged, however, that the author in his later scholarship has partially done exactly that, namely covered in greater detail particular aspects covered in the book.[8] This is commendable for the legal coverage of disaster issues is a rich subject regarding which legal circles are awakening to.

One issue I would have liked to see addressed in greater detail relates to the use of derogation by states in disasters. Legal scholarship suggests that in this area many states are still stuck on the exception par-

5 Lauta, *Disaster Law, supra* note 1, at p. 60.

6 Lauta, *Disaster Law, supra* note 1, at pp. 2-3.

7 Lauta, *Disaster Law, supra* note 1, at p. 108.

8 Examples include: Kristian Lauta, "New Fault Lines? On Responsibility and Disasters", 5(2) *EJRR* (2014), pp. 137-145; Kristian Lauta and Jens Rytter, "A landslide on a mudslide? Natural hazards and the right to life under the European Convention on Human Rights", 7(1) *Journal of Human Rights and the Environment* (2016), pp. 111—131.

adigm, as the use of derogations under the International Covenant on Civil and Political Rights when facing disasters evidences state practice in this regard.[9] Lauta's book makes us reflect it is about time for law and public officials to catch up with developments in other fields, and acknowledge there is much homework for states to do before confronted with hazards. The idea that disasters have become more normal than exceptional, and thus should be managed and not handled as extraordinary events is something states have to take seriously into account. Lauta's book is a praiseworthy contribution paving the way for this change.

Overall, this is an invaluable volume combining reflection with ambition, tracing the field from early philosophical assessments and legal theoretical debates, to later developments across the world. It covers different legal fields, from human rights to the law of tort and criminal law. This is very interesting reading and certainly an important contribution in the flourishing literature on legal approaches to disasters.

EU Environmental Law and the Internal Market
by Nicolas de Sadeleer
Oxford: Oxford University Press, 2014, 560 pp.
£ 100.00; Hardcover

*Jan Darpö**

Nicolas de Sadeleer is without doubt one of the most productive and thorough of all legal scholars dealing with EU environmental law, at least among those who publish in English and/or French. There is hardly any area of environmental law that he has not commented upon during what is almost 30 years that he has been active as an author. He is also renowned for being analytical and detailed, which sometimes makes the reading of his texts – although very fruitful – somewhat time consuming. It was therefore with some hesitation that I agreed to review his latest book during the spring semester, commonly the most hectic period in the academic year. Finally I said yes, and took on the book after having concluded my teaching duties. I am happy to confirm that I do not regret my decision. It has been a sheer joy to read and, it goes without saying, I have learned a lot.

According to the publisher, de Sadeleer's book covers "*the gaps between environmental and trade law and provides a systematic, robust and practically workable analytic framework of the conflicts opposing rapidly evolving environmental law and climate change measures and internal market as well as competition rules*". In order to perform this task, the book is divided into three main sections: I. Introduction to EU environmental law, II. Respect of Treaty provisions on free movement of goods, services and establishment, and III. Competition law and the environment. While the first section introduces the reader to the most important features of environmental law, the two chapters following analyse how this basic interest of European law may be understood when encountering two other core interests within the Union, namely free movement and undistorted competition. By doing so, the book gives a broad introduction to the legal system of the EU which can be enjoyed by lawyers and others from all sectors of society; business, administration, universities and civil society.

Part I on environmental law consists of 4 chapters. In the first, de Sadeleer elaborates on the basic concept of sustainable development, environmental objectives and the requirement to integrate environmental protection into all of the Union's policies and activities. Thereafter, well known environmental principles are analysed, such as the principle of a high level of protection, the polluter-pays principle and the prevention principle. A certain focus is concentrated on the precautionary principle, which is a subject that de Sadeleer has previously analysed in depth. Most importantly, the reader is not only informed about environmental principles as such, but their role in EU law is also analysed. In Chapter 2, de Sadeleer discusses the existence of a "right to a sound environment" according to Treaty law, the EU Charter of Fundamental Rights (EUCFR) and the European Convention on Human Rights (ECHR). With reference to case-law from different courts, he raises some very interesting points. Issues concerning competence, powers and the legal basis for environmental law are analysed in Chapter 3. The concept of "mixed agreements" is expanded upon, as well as

9 Emmanuele Sommario, "Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters", in Andrea de Guttry, Marco Gestri and Gabriella Venturini (eds.), *International Disaster Response Law* (The Hague: T.M.C. Asser Press, 2012), pp. 323-352.

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